OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 23 February 2021

Session 5

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ECONOMY, ENERGY AND FAIR WORK COMMITTEE
6th Meeting 2021, Session 5

CONVENER

*Gordon Lindhurst (Lothian) (Con)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Maurice Golden (West Scotland) (Con)
*Richard Lyle (Uddingston and Bellshill) (SNP)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Alex Rowley (Mid Scotland and Fife) (Lab)
*Graham Simpson (Central Scotland) (Con)
*Andy Wightman (Lothian) (Ind)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jeremy Balfour (Lothian) (Con)
Michelle Ballantyne (South Scotland) (Reform)
Neil Bibby (West Scotland) (Lab)
Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)
Jamie Hepburn (Minister for Business, Fair Work and Skills)
John Mason (Glasgow Shettleston) (SNP) (Committee Substitute)
Alexander Stewart (Mid Scotland and Fife) (Con)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

Virtual Meeting

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 23 February 2021

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Gordon Lindhurst): Good morning, and welcome to the sixth meeting in 2021 of the Economy, Energy and Fair Work Committee. We have received apologies from Colin Beattie; John Mason will take his place this morning.

The first item on the agenda is a decision by the committee on whether to take item 3 in private. If members do not agree to do that, they should type that in the chat box—indeed, throughout the meeting, they should type in the chat box if they wish to raise something with me. Members who are not members of the committee should raise matters through the clerks.

We are agreed that we will take item 3 in private.

I see that there is a point of order from Maurice Golden.

Maurice Golden (West Scotland) (Con): On a point of order, convener. I seek your guidance on a series of eight tweets on 18 February by Andy Wightman, who is a member of the committee. I should make it clear that seven of those tweets are completely fair and representative of his views. However, the eighth tweet referred to a private email between committee members and the clerks. The tweet stated that the

“same MSPs who have lodged amendments are refusing to agree”

to a meeting on Friday.

I seek your guidance on what we can do to ensure that private emails between committee members and clerks remain private. Will you graciously consider whether the clerks should mark correspondence between members and clerks on private matters as “private and confidential” to ensure that there is no breach of trust?

The Convener: As far as I am aware—I do not think that Maurice Golden is suggesting this—Andy Wightman is not technically in breach of the standing orders or any other code of conduct, so no issues arise from that. As Maurice Golden has pointed out, I think, the correspondence in question was not marked “private”, although discussing it in public might be unhelpful for committee members, particularly when no decision has been taken on whether or when a meeting is to be held. That is a matter for Andy Wightman to consider.

I will request that the clerks mark future committee correspondence as “private” so that the issue does not arise again. Although technically within the rules, it is not necessarily helpful if members wish to correspond with one another about committee procedure, particularly when that has not yet been decided. That is not necessarily helpful for us as a committee in coming to an agreement on such things.

Tied Pubs (Scotland) Bill: Stage 2

09:04

The Convener: Under agenda item 2, the committee will consider the Tied Pubs (Scotland) Bill at stage 2. I welcome to the meeting Neil Bibby, who is the member in charge of the bill and who will speak to and move his amendments. I also welcome the Minister for Business, Fair Work and Skills, Jamie Hepburn, and fellow MSPs Jeremy Balfour, Michelle Ballantyne, Rachael Hamilton and Alexander Stewart.

I ask non-committee members not to use the dialogue box during voting. However, any member who wishes to catch my attention otherwise—for example, to speak during the debate on a group of amendments—should type "R" in the BlueJeans chat function. If members experience technical problems, please contact me and the clerks via the usual means. If need be, we can suspend the meeting until we regain connectivity.

Section 1—Scottish Pubs Code

The Convener: Amendment 15, in the name of Maurice Golden, is grouped with amendments 16 and 17. I will call Maurice Golden to move amendment 15 and speak to all the amendments in the group. Thereafter, I will call Richard Lyle to speak to amendment 16 and the other amendments in the group and Jeremy Balfour to speak to amendment 17 and the other amendments in the group before we come to the minister and the member who is responsible for the bill. I call Maurice Golden.

Maurice Golden: Thank you, convener.—[*Inaudible*.]—approaching the bill. It is unhelpful to take a Marxist view of tenants versus landlords or multinationals versus tenants with respect to the legislation. From hearing what members said at stage 1 of the bill, I believe that every member wants a fair and proportionate system. I also believe that we can achieve the system that every member wants through discussing the amendments in this group and the other groups.

I was a tenant in retail—that is part of my background. I was subject to arbitrary rent increases, and a multinational retailer put up a large complex just 500 yards up the road from my business. I understand the needs of tenants, and it is with that understanding that I approach amendment 15 and all the proposed amendments to the bill.

Amendment 15 would enable rather than require the Scottish ministers to make a statutory code that would capture all pubs in Scotland that operate under the tied partnership model. It would also remove any time limits for the introduction of a code.

The Tied Pubs (Scotland) Bill is a solution to a problem either that does not exist or that we, as a committee, are entirely unsure of the extent of. Amendment 15 would do several things. Most important, it seeks to strike a balance between giving the Government all the powers that it would require to introduce a statutory code for Scotland's tied pubs and the respective pub-owning businesses, and not dictating the extent of the code or—most important—including the strict and, in many cases, totally unworkable parameters that it sets into primary legislation. I believe that it is a sensible, worthwhile and consensus-seeking amendment that shows that both the proponents and the opponents of the bill have been listened to.

As all members of the committee are aware, there is very little evidence to point to a major problem with Scotland's approximately 750 tied pubs that the bill would address. First and foremost, the only detailed and qualitative study of the tied pub sector in Scotland came in 2016. That study was produced for the Scottish Government by APS Group Scotland and CGA. It can be viewed via the Scottish Government website, and we can be sure of its independence and unbiased view.

The study was carried out

"to help Scottish Ministers to decide whether legislation on the operation of pub companies in Scotland needs to be introduced."

The "overall aim" was

"to provide a robust evidence base to assist Ministers in coming to a view as to whether legislation on the pub sector in Scotland is required, and where the parameters of that legislation should apply."

The study noted—quite significantly, in my opinion—that, until that report,

"Scottish Ministers received no robust representations which took account of all benefits of particular pub models to highlight whether any particular model was significantly disadvantaged in Scotland."

The report's outputs aimed

"to help inform future policy direction on better regulation for the Scottish pub sector whether using a voluntary or regulatory approach."

The report stated:

"The original research design required the data collection to be made over two phases. The first step, the Scoping Study, aimed to use empirical evidence to assess if any part of the pub sector was unfairly disadvantaged based on case studies from all parts of the sector. This initial exercise also looked to inform whether there was a need for further investigation through follow on research. The second stage aimed to expand upon the key results of the initial case study through a robust quantitative assessment of the market via a wider sample survey of pubs."

The report also stated:

"The Scoping Study was designed to be representative of the different pub types across Scotland; i.e. Fully Tied, Partial Tied (Leased/Tenanted), Managed and Independent Free Trade.

To provide as broad an evidence base as possible CGA used a combination of qualitative and quantitative analysis to help understand the scale of any issues within the Scottish pub tie model, and the rationales behind them.

The research undertaken included a literature review, semi-structured in-depth interviews, case study data collection and triangulation of data by contrasting internal CGA data, Companies House information (when available) and data collected through interviews.

In order to assist with the research, a Sounding Board was established. The Sounding Board comprised of key stakeholders from the Scottish Licensed Trade, relevant trade associations and related businesses. The group—"

which included both opponents and proponents of the bill—

"was instrumental in assisting CGA with defining both the requirements of the research and in providing access to key contacts."

According to the report,

"A number of pubs volunteered to participate in the case study research programme. These pubs were verified against Outlet Index and had been continuously present in the database for at least two years. The sample set was a random sample across tenure type and trading style of outlets to a pre-set quota provided in the project brief."

The context is important for the amendment. The report stated:

"CGA retained control of the sample base at all times to maintain complete anonymity and made the final decision, regarding those outlets selected for the study, on an entirely confidential basis.

The confidentiality of all case study and survey data was paramount to the project. CGA used all reasonable means to ensure strict adherence via the Data Protection Act, Market Research Society (MRS) Code of Conduct, CGA Internal Confidentiality Policies and Non-Disclosure Agreements."

The report went on to state:

"Independent free trade (IFT) are those pubs that are wholly operated by the licensee and free to purchase all drinks from independent sources.

Within the tenanted pubs, those Fully Tied represent pubs that are Leased/Tenanted with a total tie to their Pub Company for drinks.

Pubs that are Partially Tied are defined as those pubs that are Leased/Tenanted with a partial tie to their Pub Company for drinks (some agreed drinks can be purchased outside their agreement)."

09:15

It is important that we know the context. The report stated:

"CGA produced three structured bespoke questionnaires for each type of pub interviewed".

It noted that there was a disappointing response from individual tenants. Nevertheless, it concluded:

"The on trade is currently a very testing market in which to operate a retail business, and has been for some time. There are financial difficulties driven by significant social, legislative and economic long-term changes."

The result of that research is increasingly important.

That concludes my remarks. I would like to listen to the views of other members.

I move amendment 15.

The Convener: Willie Coffey would like to make a point of order.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): On a point of order, convener. I want to get your guidance on how much time you will allow for members to make their points.

Maurice Golden spoke for more than 10 minutes on one point, most of the content of which I do not recall having been made during the committee's deliberations on the bill. If that is the way that he plans to proceed, we will never get through stage 2 proceedings on the bill today. What discretion might you apply to asking members to make their points in a timely fashion?

The Convener: My notes suggest that he spoke for seven minutes and not 10. However, the record will show how long it was. The reason for allowing Maurice Golden some leeway is that we are at the opening remarks stage. The same courtesy will be extended to Neil Bibby—if he wishes it—and, perhaps, the minister. As we get into the amendments, I hope that members will be much briefer in their comments.

However, that is the reason why Maurice Golden spoke for as long as he did. I hope that that is sufficient for your purposes, no matter which of us was watching the clock correctly.

Willie Coffey: Thank you, convener.

The Convener: Bearing that comment in mind, I turn to another member of the committee. Richard Lyle, you will start at 09:17, according to my clock.

Richard Lyle (Uddingston and Bellshill) (SNP): Am I going to be timed?

During the pandemic, it has been evident that the hospitality industry has arguably suffered the most. With lockdowns, strict restrictions and limited support, the sector has been brought to its knees. The Tied Pubs (Scotland) Bill appears to want to damage the industry further by imposing levies on businesses that are already struggling; the countless small businesses that they support will also be affected.

The Scottish market is substantially different from that of England and Wales, with one of the major differences being the number of tied pubs in each region. Tied pubs account for around 39 per cent of the market in England and Wales, which is nearly 20,000 pubs. In comparison, in Scotland, only 17 per cent of the market—750 pubs—is tied. Those statistics demonstrate multiple issues.

At stage 1, the committee was clear that, on the balance of the evidence presented, we did not believe that there was sufficient evidence to progress the bill and all that it entails. The written evidence that we collected and the oral sessions that we held with representatives from all sides of the debate allowed us to be confident in our conclusion. Indeed, that was consistent with the Scottish Government's 2016 study, which concluded that no one part of the sector is disadvantaged over any other.

However, we are of course now at stage 2, so it is incumbent on us all to ensure that legislation enacted in this area is proportionate. It is vital that the bill does not lead to a large waste of taxpayers' money and, crucially, that it does not further undermine the pub sector, which is currently on its knees, and prevent it recovering from the devastating impact of the pandemic. We must protect investment in the livelihoods of the many operators and individual licensees who rely on the support of pub companies in running their businesses and pubs.

Why reinvent the wheel, and why invent a new code that has unworkable and potentially damaging provisions, when the voluntary code of practice, which was specifically designed to reflect the Scottish pub market, already exists and operates well?

The intent of amendment 16 is to avoid all sorts of complicated factors with the bill and to develop a new code by first putting the existing code on a statutory footing. When the existing United Kingdom-wide voluntary code was adapted in 2016 as a Scotland-specific code, the minister at that time noted that that was very positive.

The Scottish Arbitration Centre, which is located in Princes Street in the heart of Edinburgh, was opened in March 2011 by Fergus Ewing MSP, who was the Minister for Community Safety at that time. The centre promotes arbitration in the Scottish business community as an effective alternative to legislation, and promotes Scotland to the world as a place in which to conduct international arbitration. It is an independent, non-profit company, limited by guarantee. In its distinguished legal tradition and innovative legislation, and in having the Scottish Arbitration Centre, Scotland is well placed to compete globally as an attractive, cost-effective venue for arbitration.

The bill is, in effect, a mishmash of the 2016 English regulations and the old Thatcher beer orders. It is not proportionate and, because of that, it is bound to be struck down by any legal test. Tenants of more than one in five pubs that are impacted—more than 150 premises—have written to the First Minister, desperately pleading with her not to let the bill go through. That should not be news to anyone. Before we voted at stage 1, one tenant said that the news that the matter was being discussed, coming at a time when their businesses were on their knees and they were still completely in the dark about when they could open again, made them want to cry.

Why are we progressing the bill? It reflects badly on the committee and the Parliament that the bill could still become law. The voluntary code already exists and, as members can see, is extremely comprehensive. It guarantees fair and lawful dealing with tenants. Ingoing tenants are as prepared as they can be; they have total clarity in their agreement and in exactly what it entails. Ultimately, there should be no surprises.

I do not know how long I spoke for, convener.

The Convener: We need not worry too much about that. It was brief and to the point, as always.

I have two points to make. First, I have been advised by the clerks that, technically, in committee, we have points not of order but of clarification, so I correct myself. Secondly, reference was made to legal tests on whether the bill can stand up. That is not a matter for us at this point, because it is not the issue that we are considering today. I therefore ask members to refrain from legal argument and to leave that to the courts.

Alex Rowley and Graham Simpson want to come in on what Richard Lyle has said. Jeremy Balfour will speak to amendment 17 and other amendments in the group, and then I will bring in Mr Rowley and Mr Simpson, in that order.

Jeremy Balfour (Lothian) (Con): Good morning. My amendment 17 recognises that the process has been rushed and that we lack a solid evidence base. It would require more dialogue between the Government and those who will be impacted by the bill. It would create a consultative period of a minimum of 24 months before the code could be introduced. The reason for that is, I think, obvious. As well as the lack of evidence, we must take due cognisance of where we are at the moment with the pandemic and the impact that it is having on the hospitality industry.

When the proposal for the bill was floated by the member back in 2016 and when it was formally intimated in January 2020, none of us could have foreseen what was about to hit our country and our world. As we all know, the pandemic has

changed our lives and impacted everything. The fact that we are meeting virtually is testament to that.

The pandemic has absolutely devastated the hospitality industry and, in the past 12 months, regardless of whether they are tied or independent free trade, managed or free of tie, pubs have spent the majority of the time under forced closure. Grants and support from both the United Kingdom and Scottish Governments have been instrumental in keeping such businesses afloat and we hope to provide as many as possible with a bridge to the other side of the pandemic. Even with that, however, figures from CGA have shown that a further 4 per cent of pubs in Scotland closed for good between December 2019 and December 2020 and, unfortunately, further business failures are expected.

We have had representations from groups on both sides of the debate and I have read those with interest along with the committee's report and the *Official Report* of the stage 1 debate. Everyone is clear that the hospitality industry will continue to face pressures, even after the pandemic. Obviously, pubs want to open sooner rather than later, but they are realistic. They know that we need to support the national health service and save lives. Until we have clear guidance about when pubs may open, the pressures will continue. It will be a long road back even when they do open, and unfortunately some pubs and other businesses will not make it beyond the pandemic.

If the committee and indeed the Parliament burden such businesses with further regulation, cost and bureaucracy at this time, it will compound those pressures and make it likely that we will see fewer pubs reopening when they are allowed to.

The proposed legislation affects only a small proportion of the market, but those businesses have arguably received more support from the pub-owning companies than those who operate in independent free trade or under another agreement. The vast majority of pub-owning companies have committed themselves to reviewing rents once businesses have reopened. There is a common understanding that trading might be at a lower level because of social distancing and that pubs may require different support, with reduced payments. That commitment comes on top of the cancellation of any built-in rent increases that were due before the pandemic hit.

I have had the opportunity to speak to different pub-owning businesses, particularly in my region, and they have illustrated that the support through rent reductions has been based on the individual circumstances of businesses. That prioritisation of support by pubcos has meant that businesses that received nothing in grant payments from the Government last year—those businesses with rateable values over £51,000—have been given a fighting chance of survival.

The point is that the bill was written before any of that happened. All those factors need to be considered when the committee decides on the bill that is before it today. We must listen directly to the operators who will be impacted. One such tenant, Andrena Bowes, who runs several pubs across Edinburgh, said:

> "The coronavirus has devastated the pub sector and politicians should be focused on that, not wasting time on proposals which aren't wanted and definitely not needed."

My second major point—I will make it more briefly if I can, convener—is about the number of pubs that we are talking about and the impact that the bill will have on them. Several of them are in my region. I will not read out all their names because of time, but at least 10 to 15 of them are concerned about the bill. We must heed the warnings from those tenants because, after all, they are the ones who are meant to benefit from the bill.

We must also analyse the data that the member in charge of the bill, Mr Bibby, used to back up his reasons for introducing it. The consultation that he carried out on his proposal received a very limited response from the tenants that it will impact. If we look again at the evidence that he took, we see that only nine tenants of pubs responded. More Labour MSPs responded to the consultation than people in the sector, yet the takeaway or the headline was that 78 per cent of respondents were in favour of the bill. That gives equal weight to MSPs and people who run pubs, which is not correct. Surely we must listen to those whom the bill would most impact—those whose businesses would be impacted, and especially those whose businesses are meant to benefit.

Amendment 17 would allow further scrutiny of the proposals and time for the industry to recover from the pandemic. It would help to ensure that we and the Government did not take a huge misstep that would only result in further hardship for the sector, further pub closures and more job losses. I urge the committee to back my amendment.

09:30

Alex Rowley (Mid Scotland and Fife) (Lab): You will be pleased to know that I do not intend to speak to every group of amendments, convener. The committee has a responsibility, which I wrote to the convener and committee members to set out last night. We have until Friday to see stage 2 through. Given the agenda that is before us, brevity will be important.

I intend to vote against amendments 15 to 17. Richard Lyle and I are—amazingly—on the same

page on many things in politics, but I disagree with the point that he and Jeremy Balfour made. If anything, I suggest that we have the opportunity to see the bill through and ensure that we build back better, which will include the industry.

I enjoy a pint and going to my local pub, and I am aware of the difficulties that pubs face. I got an email yesterday from the Kingdom of Fife branch of the Campaign for Real Ale, which said:

> "We are a consumer organisation representing thousands of pub-goers and beer drinkers in your constituency and across the country. I am writing to ask you to support the Tied Pubs Bill without it being watered down at Stage 2, and to make sure that it reaches Stage 3 and ultimately becomes law."

I will certainly support that.

The organisation said:

> "This Bill would deliver improvements in the quality of the tied pubs sector, helping to make community pubs more sustainable as well as increasing variety and choice at the bar for consumers.
>
> We have serious concerns that not progressing this legislation (or amending it so that its main principles along with the right to a Market Rent Only lease option are watered down or removed in order to make the legislation ineffective) will mean that the existing problems and unfairness in the tied pubs model remain.
>
> Not only would this be a missed opportunity for the industry to build back better after the COVID-19 crisis, it would have devastating consequences for consumers and tied pub tenants in Scotland who deserve at least the same protections as their counterparts in England and Wales."

I agree with that.

I hope that we will make the progress that we need to make and that members will restrict their comments. We all know where we are with the arguments. I say to my fellow committee members that we have a responsibility to the Parliament to get through stage 2. I hope that we will do that today, but we certainly must do it by the end of Friday.

Graham Simpson (Central Scotland) (Con): A number of members have discussed how we should approach the amending stage. Having dealt with a number of bills in the current parliamentary session, I believe that it is incumbent on us to do our job properly. That involves scrutinising legislation, and amending bills is a very important part of that. All the amendments—I know that there are a lot of them—are important and it is important that arguments are presented.

The three amendments in the group—amendments 15 to 17—are entirely sensible and the members who lodged them have set out the case very well. With the background of the pandemic, the sector has been decimated. I am a real ale fan just as much as Alex Rowley is, and I am concerned about what will be left at the end of the pandemic.

Other members including, I think, Richard Lyle have mentioned that there are only 750 tied pubs in Scotland, which represents just 17 per cent of the market. In England and Wales there are 20,000 tied pubs, which represents 40 per cent of the market there. We are in an entirely different situation in Scotland.

Maurice Golden mentioned the independent study from 2016, which was commissioned by the Scottish Government. It showed that there was no case for legislation. It stated clearly:

> "The evidence collected did not suggest that any part of the pub sector in Scotland was unfairly disadvantaged in relation to another."

I also note that the tenants of 151 Scottish pubs have written to the First Minister about the bill, saying that it should be either disregarded or amended so that it does not damage their businesses.

I support amendments 15 to 17.

The Minister for Business, Fair Work and Skills (Jamie Hepburn): I am here today to set out the Government's views on amendments to the bill. I stress that it is, of course, not a Government bill, but Mr Bibby's member's bill.

Like Mr Golden, I want to see a successful tied pub sector in Scotland with a level playing field in the relationship between the tied pub tenant and their landlord. I say to Mr Golden that I certainly do not approach the issue from a Marxist perspective. It is essential that the bill works as well as possible for everyone who is involved in the sector.

The Scottish Government does not support amendments 15 to 17. Amendment 15 would remove the statutory requirement to produce the code and make the power conferred on the Scottish ministers permissive rather than obligatory in nature. Given the central nature of the code to the bill, the Government's position is that it will be introducing a code and, as such, making it optional to do so is unnecessary. It would also provide a lack of certainty for the sector on how we might move forward.

Amendment 16 would result in pub-owning companies needing to comply with a hitherto voluntary code of practice. We know from the stage 1 evidence that there are concerns about the voluntary code's effectiveness, although it will be a useful basis on which we can inform the consultation that we will undertake.

On amendment 17, I fully agree that comprehensive consultation is required before any code is produced, but I do not agree with the requirement for the consultation period to last for

at least two years. I am committed to a meaningful consultation in the development of a Scottish pubs code, but that duration strikes me as being unnecessarily long and it would only serve to delay the implementation of the code.

In any event, the amendment is not required as the Government will consult as a matter of course on the detail of the code and it will of course comply with the existing requirements to produce impact assessments.

I ask members not to support amendments 15 to 17.

The Convener: Before Neil Bibby winds up on the group, I want to ask the minister about the proposal in subsection (c) in amendment 17 that the Scottish ministers must

"have regard to the law of landlord and tenant in Scotland more generally."

One of the criticisms of the bill, rightly or wrongly, is that it is an English solution to something that is not a problem in Scotland. Is there a reason why the Government would not want to have regard to the law of landlord and tenant in Scotland?

Jamie Hepburn: Of course not, convener—

The Convener: [*Inaudible.*]—I think that a contrast is drawn out there between Scottish law and English law.

Jamie Hepburn: I beg your pardon, convener. I did not hear part of what you said. However, my perspective is that we clearly have to have regard to those matters. Anything that we pass has to be placed in the context of wider Scots law. We do not have any fundamental concerns about that element of the provision. My concerns are the wider ones that I set out, and they are the reason why I urge members not to support the amendment.

The Convener: Thank you, minister. We come to Neil Bibby, who is the member in charge of the bill.

Neil Bibby (West Scotland) (Lab): Good morning. First, I respectfully say to the committee that the purpose of stage 2 is not to reopen the debate on the general principles of the bill, as Mr Lyle and Mr Golden seem to have done. We have not arrived at this point by accident. Parliament agreed to the general principles of the bill at stage 1. The bill has Government support, albeit with caveats, and I thank the minister for his on-going engagement with regard to it.

I note members' comments about the stage 2 proceedings happening during a pandemic, but the bill was voted on at stage 1 during the pandemic, and it will help the pub sector and publicans to recover, as Alex Rowley said. I hope that the bill will help them to build back better after the pandemic.

The bill is supported by evidence from pub tenants across Scotland and by the evidence that the committee took. Ultimately, that was strong enough to persuade Parliament to endorse the bill at stage 1. The bill is aimed at supporting small businesses. I take a pro-small-business view, not a Marxist view or a Thatcherite view. It is a pro-small-business bill.

I note that Mr Golden signed the final proposal for the bill and voted for the bill at stage 1, so I am disappointed that his amendment 15 would change the arrangement for the establishment of a Scottish pubs code from a requirement to an option for the Government. That would completely undermine the purpose of the bill as set out in the long title and the general principles of the bill as agreed by Parliament at stage 1. I therefore urge the committee to reject amendment 15.

Richard Lyle's amendment 16 would do likewise by requiring an existing code of practice—presumably, it would be the voluntary code—to be provided for in regulations, rather than a Scottish pubs code being introduced, as is provided for by the bill. Like Mr Lyle, I would have preferred the voluntary code to be sufficient, but unfortunately it does not have the confidence of tied pub tenants. I therefore ask Mr Lyle not to move his amendment 16; otherwise, I urge the committee to reject it.

I also urge the committee to reject Jeremy Balfour's amendment 17, which would require a consultation on a draft code for a minimum of two years, meaning that the code would not be in place for several years. Amendment 17 would also provide other hurdles including a requirement for the publication of economic and human rights assessments, which I do not consider appropriate or necessary.

The Convener: I ask Maurice Golden to wind up and press or withdraw amendment 15.

Maurice Golden: Thank you, convener. If the bill is passed and the Scottish Government has the same composition by the time the act is in place, my amendment 15, which changes the word "must" to "may", would have no effect. As we heard from the minister, the Government intends to press ahead with introduction of a code, so my amendment would have no effect.

However, my amendment would provide Parliament and a future Scottish Government with a different composition with an opportunity either to explore further evidence or to introduce a code, as the current Scottish Government intends to do. With regard to the pubs code, I think that amendment 15 is a reasonable amendment to make, so I will press it.

09:45

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 15 disagreed to.

The Convener: Does Richard Lyle wish to move amendment 16?

Richard Lyle: I listened with interest to the comments that were made about my amendment and I have taken them on board. I will not move the amendment. I am sure that Mr Rowley will be very happy.

Amendment 16 not moved.

Amendment 17 moved—[Jeremy Balfour].

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 17 disagreed to.

Section 1 agreed to.

Schedule 1—The Scottish Pubs Code

The Convener: Group 2 is on the Scottish pubs code: information and certain terms of agreement. Amendment 18, in the name of Michelle Ballantyne, is grouped with amendments 19 to 29. I point out that amendment 26, which is further on in the group, pre-empts amendment 27, so if amendment 26 is agreed to, I will not be able to call amendment 27.

Michelle Ballantyne (South Scotland) (Reform): As has been discussed, the Parliament agreed to the general principles of the bill at stage 1. I believe that our job today is to make sure that it is fit for purpose for both sides. It is important that publicans who have tied leases feel that they are being fairly treated and that they have all the necessary protections in the bill. However, it is also important that the pubcos—those who own the buildings—can get a fair return on them. If the bill does not result in a win-win situation for both sides, there will be a decline in the opportunity for people who wish to become publicans to enter the market. Tied pubs are often the first stage in that process. Through my amendments, I am keen to ensure that such a win-win situation exists.

My amendments in this group—amendments 18, 24 and 29—are quite simple. They aim to ensure that there is fairness for both sides. Amendment 18 would allow information to be provided electronically or in hard copy. With amendment 24, I want to make sure that any methodology accords with industry practice, otherwise there will end up being conflicts between the bill and the realities of commercial practice. I also want to ensure that there is balance in respect of the difference in the size and resources of the parties and a recognition that tied publicans probably do not have huge resources, so that they can fight on an equal footing if there are any disputes.

My amendments are quite simple, and I hope that the committee will see fit to agree to them.

I move amendment 18.

The Convener: Thank you. I call Graham Simpson to speak to amendment 19 and the other amendments in the group.

Graham Simpson: I will be brief, as I have only three amendments in this group.

Amendment 19 deals with the requirement for pub-owning businesses to provide information. It is a simple amendment that would require assignees of tenants—in other words, people appointed to act for them—to be provided with the information. The amendment is straightforward, and it aims to be fair.

Amendment 23 would ensure that any requirement that is imposed by the code on a pub-owning business should be "fair and reasonable". I invite committee members to agree that amendment 23 is just that—fair and reasonable.

The provision of the bill that is covered by amendment 28 relates to the restriction on enforcing certain terms of agreements. Amendment 28 says that the code

"may specify circumstances in which a pub-owning business is not prohibited from enforcing a term of an agreement of a kind described in sub-paragraph (2)."

Therefore, my amendments are fairly straightforward.

The Convener: I call Rachael Hamilton to speak to amendment 20 and the other amendments in the group.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): First, I refer members to my entry in the register of members' interests. I should have alerted the clerks to this interest earlier, and then the convener could have invited me to declare it before proceedings started. I have a pub in the Borders, but it is not a tied pub.

I have four amendments in this group—amendments 20, 21, 22 and 25. Amendment 20 seeks to remove the need to supply information to the adjudicator. Information could still be supplied if there was an issue with any agreement; however, there is no foreseeable reason why such information would need to be supplied up front. The code should not mandate that information be supplied for every agreement, even if there are no issues or it is not required by the adjudicator.

Amendment 21 would remove the words "For example" from paragraph 1(2) of schedule 1, to ensure that the requirement is entirely open ended.

Amendment 22 relates to when the code should require information pertaining to rental assessments to be provided. The amendment would ensure that the requirement applies

"only in the circumstance where there is an increase of 2% above RPI in the price of a product or service which is subject to a product tie or service tie that the tenant has a contractual obligation with".

That would ensure that only those arrangements whereby there was a significant increase in charges to the tenant were captured, which would help to ensure consistency and clarity for the tenant and the pub-owning business.

Similarly, amendment 25 is aimed at giving protections to tenants. It would do so by granting a right of appeal, should the following conditions be met:

"an event had occurred which is beyond their control ... the rent assessment was not reasonably foreseeable when the tenancy was granted or when the rent was last assessed ... there has been a significant impact on the level of trade that could be reasonably expected to be achieved by the tied-pub,"

or should there be

"any other matter as specified in the code."

That would help to ensure that appeals were correct in nature and were not frivolous.

Alexander Stewart (Mid Scotland and Fife) (Con): Good morning. I am delighted to be here. Amendment 26 seeks to remove the discretion of the Scottish ministers to decide what terms are unenforceable. The bill gives no guidance as to the basis on which the Scottish ministers are to decide on that issue.

No issue is taken with the provisions of paragraph 3(1)(b) of schedule 1, which prohibits penalty clauses when a tied pub tenant seeks to enforce the code and upwards-only rent reviews. However, the effect of that provision is that it will create huge uncertainty as to what terms may or may not be permitted until any code is brought in. It might mean that pub-owning businesses decide not to grant any further leases until they know what terms are lawful and what terms are not.

Furthermore, because the Scottish ministers have the power to amend the code using secondary legislation, a term in a lease could be enforceable at one point in time but could later be declared to be unenforceable. That would have the effect of retrospectively rendering terms that would otherwise be lawful unlawful, and it is therefore objectionable as a matter of principle.

Jeremy Balfour: I will be slightly briefer than I was the last time. Amendment 27 would ensure that terms that are reasonable that are outside the provisions of the code are not automatically unenforceable. It is not appropriate—indeed, it might prove impossible—for the Scottish ministers to produce a definitive list of terms that are considered objectionable. Much would depend on the circumstances of each case. Therefore, I would argue that laying down hard-and-fast rules is not the way to proceed, and that it will make the legislation less effective.

However, if such a provision is to be included, it is important that the Scottish Parliament gives guidance to the Scottish ministers, the adjudicator and, ultimately, the courts as to how reasonableness is to be determined.

Maurice Golden: I think that the amendments in this group reflect fairness and accordance with industry practice, and that they would provide the balance that we would want to see from the bill. Ultimately, they are pro-small-business amendments that would provide the Scottish ministers with reasonable guidance as to how tests on the application of the requirements of the bill can be made, and I urge committee members to support them.

10:00

Jamie Hepburn: Amendments 18, 19, 20, 23 and 24 all relate to pub-owning businesses being required to provide information under the code. It is the Government's view that those amendments

are unnecessary or could have the effect of preventing the legislation from working well.

The bill does not currently restrict the format in which information can be provided to prospective tenants. It makes provision for the code to set out requirements for how information is to be produced.

I support the principle behind Mr Simpson's amendment 23, which seeks to ensure that information requirements are fair and reasonable. I gave the amendment close consideration but concluded that there is no need to include such a provision in the bill, given that the Scottish ministers must use their best endeavours to ensure that the code is drafted consistently with the principles of fair and lawful dealing, and that it will be subject to various impact assessments before being introduced through secondary legislation. The effect of the bill as drafted already accounts for the concerns that Graham Simpson has raised.

As I mentioned earlier, I support full and thorough consultation on the draft Scottish pubs code, which I think is at the centre of Ms Ballantyne's amendment 24. I believe that that will be accounted for by the process that we take forward.

Amendment 20 would simply prevent the adjudicator from carrying out investigations effectively, as it would mean that it could not require information to be provided. That also goes to the root of a later amendment from Ms Hamilton—namely, her amendment on the removal of the office of adjudicator altogether—and it might be considered in that light.

Amendments 21, 22 and 25 on rent assessment are, in my view, equally unnecessary. I am not clear why we would want to restrict the rent assessments to a few situations when the code has not yet been developed and appropriate consultation with stakeholders has not taken place.

Amendments 26, 27, 28 and 29, on enforcing certain terms of agreements, would reduce the operational effectiveness of any Scottish pubs code. Paragraph 3 of schedule 1 is a key lever to ensure compliance with the code.

I therefore ask members not to support the amendments in this group.

Neil Bibby: I, too, refer members to my entry in the register of members' interests. I did so at stage 1 with regard to the support that I have received in relation the bill, and I do so at stage 2 as well for full transparency.

Many of the amendments in the group seem to be aimed at significantly weakening the code and placing unnecessary or unreasonable hurdles in the way of its effective operation.

I welcome Michelle Ballantyne's comments about being constructive and thank her for meeting me last week. However, I consider amendment 18 unnecessary. Although it is well intentioned, I do not believe that there is a need for the bill to be so specific about the method by which information should be provided. That issue can be considered if it comes up in consultation on the code.

Amendment 19 seeks to add prospective assignees of tenants of tied pubs to the list of those to whom the pub-owning business may be required to give information, which I am not convinced is necessary.

Amendment 20, in the name of Rachael Hamilton, would remove the possibility of the code requiring pubcos to provide information to the adjudicator, which is an unhelpful and counterproductive measure that would undermine the effectiveness of the code and the role of the adjudicator, and reduce transparency and openness—principles that the drafting of the bill reflects. I urge the committee to reject amendment 20.

Rachael Hamilton's amendments 21 and 22 deal with the possibility of the code requiring pubcos to provide rent assessments and seek to limit and to make very specific the circumstances in which a rent assessment would be required. I do not support such a restriction and urge the committee to reject those amendments.

Amendments 23, 24 and 25 relate to the requirement to provide information. It is not necessary or normal to specify in the bill that the requirements that the code may contain should be fair and reasonable or that any methodology that the code may contain should have regard to guidance that is issued by other bodies. In providing for an appeal mechanism for a tenant who has been subject to a rent assessment, amendment 25 makes that subject to a number of substantial and uncertainly expressed hurdles.

Amendments 26 to 29 deal with restriction on enforcing certain terms of an agreement. All those amendments would significantly weaken the provisions in that part of the bill and would introduce additional qualifying factors. I therefore urge the committee to reject them.

The Convener: I ask Michelle Ballantyne to wind up and to press or withdraw amendment 18.

Michelle Ballantyne: Thank you. I hear what the minister and Neil Bibby, who is presenting the bill, have said, but it is important to ensure that the bill sets out that things must be fair and reasonable to both parties, that it accords with

industry practice and, particularly, that it takes account of the different resources of both parties. Therefore, I press amendment 18.

The Convener: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 18 disagreed to.

Amendment 19 moved—[Graham Simpson].

The Convener: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 19 disagreed to.

The Convener: I call amendment 20, in the name of Rachael Hamilton, which has already been debated with amendment 18. I ask Rachael Hamilton to move or not move—[*Interruption*].

There is some noise in the background somewhere. I am not sure whether someone has a radio on or something, but they should turn it off.

Rachael Hamilton is not on screen. Does Maurice Golden wish to move amendment 20, in the name of Rachael Hamilton, on her behalf?

Maurice Golden: I believe that Rachael Hamilton is moving amendments in another committee at the same time, such are the vagaries of the online system. I am happy to move amendment 20 on her behalf.

Amendment 20 moved—[Maurice Golden].

The Convener: Thank you. If members are attending another committee online, they should ensure that we do not hear it in this committee.

The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 20 disagreed to.

Amendment 21 moved—[Maurice Golden].

The Convener: The question is, that amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 21 disagreed to.

Amendment 22 moved—[Maurice Golden].

The Convener: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 22 disagreed to.

Amendment 23 moved—[Graham Simpson].

The Convener: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 23 disagreed to.

Amendment 24 moved—[Michelle Ballantyne].

The Convener: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 24 disagreed to.

Amendment 25 moved—[Maurice Golden].

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 25 disagreed to.

Amendment 26 moved—[Alexander Stewart].

The Convener: I remind members that if amendment 26 is agreed to, I will not be able to call amendment 27, because of the rule on pre-emption.

The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 26 disagreed to.

Amendment 27 moved—[Jeremy Balfour].

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 27 disagreed to.

10:15

Amendment 28 moved—[Graham Simpson].

The Convener: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 28 disagreed to.

Amendment 29 moved—[Michelle Ballantyne].

The Convener: The question is, that amendment 29 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 29 disagreed to.

The Convener: The next group of amendments is on the Scottish pub code's requirement to offer guest beer. Amendment 30, in the name of Maurice Golden, is grouped with amendments as shown in the groupings. I point out that amendment 30 pre-empts amendments 31, 32, 32A, 32B, 33, 33A, 33B, 34 to 40, 40A, 40B, 40C, 40D, 41, 41A, 41B, 41C and 42 to 44.

I also point out that amendments 40A, 40B and 40C are direct alternatives, as are amendments 41A, 41B and 41C. Direct alternatives are two or more amendments seeking to replace the same text in a bill with alternative approaches. In the case of this group, as I have already noted, there are two areas where that arises. On amendments 40A, 40B, 40C and 40D, for example, a vote will be taken on all four amendments in the order in which they appear in the marshalled list. If all four were to be agreed to, each in turn would succeed the other and it would be the last of those amendments that would appear in the bill as amended.

I call Maurice Golden to move amendment 30 and speak to all amendments in the group.

Maurice Golden: In speaking to all the amendments, I will be as brief as I can, but I hope that members recognise the number of amendments that I have to go through.

Amendment 30 would remove the need for a guest beer provision to be included in the code. It is my opinion, and that of key stakeholders in the industry, that the introduction of the guest beer provision has the potential to hinder rather than help the local producers that the member believes it is intended to help, as it could lead to a situation in which large breweries are given greater access to bar taps despite already holding a monopoly on the market.

I do not dispute the reasoning for the inclusion of the proposal. However, the intention of a guest beer provision, although admirable, appears to be ill thought out and has the potential to have the opposite impact to the one that is intended. We believe that the provision is aimed at encouraging more products from local, small breweries into pubs, but that will not happen. Instead, the consequence would be a race to the bottom on price, meaning that larger multinational brewers would be able to outprice smaller domestic brewers, crowding them out of the market and removing the opportunity for consumers to enjoy fantastic, locally produced beer.

There has been a brewing renaissance in Scotland over the past number of years, and the number of breweries has skyrocketed. There are now estimated to be more than 150 active breweries in Scotland and, the effects of the pandemic aside, it has been a fantastic success story, which we should seek to support and not hinder with further misguided interventions in the sector. If the guest beer provision were to be included, unamended, as the member responsible has indicated that he would like to happen, a race to the bottom would occur. Amendment 32 also includes provisions to ensure that any guest beer arrangement cannot be unreasonably refused by the pub-owning company, and it would satisfy other criteria in the code.

Amendment 32A would place a cap on the size of brewer that could supply a guest beer. Provided that the committee believes that there needs to be a guest beer provision, the amendment would ensure that such a provision does what it is intended to do, which is support local Scottish brewers. As I have highlighted already, the

provision as drafted would see smaller, local Scottish brewers unable to compete with the larger multinationals, simply due to scale. The provision in amendment 32A would set the cap at 30,000 hectolitres. I am relaxed on where exactly the cap would be set, and I note that other committee members and other MSPs who are equally concerned about the bill have lodged amendments that would set the cap at a different level. I am eager to hear their reasoning, and I will listen to the debate with an open mind, but we must ensure that the stated goals of the provision and the bill are what the legislation would actually do.

Amendment 39 is largely a consequential amendment that would ensure that the provision makes specific reference to “small brewery” beer in that context. That is relatively uncontroversial, and I trust that the committee will accept it, assuming that it believes that the provision should be retained in the bill.

Amendment 40B is an amendment to amendment 40, which is in the name of Graham Simpson. It increases the distance from which a tied tenant can seek a guest beer, from 5 miles, as proposed in amendment 40, to 10 miles. Again, I would appreciate hearing other members’ views on what the limit should be set at.

Amendments 42, 43 and 46 are also to ensure that any guest beer is produced by a small brewery, as defined under the Alcohol Liquor Duties Act 1979. They would ensure that guest beers benefit small breweries as opposed to permitting a tenant to buy large volumes of beer from a national brewer. Small brewers benefit from a tax advantage through small brewers relief, and that is what has been used to define the sorts of beer that would be subject to guest beer agreements. Again, I imagine that that was the true intention of the provision—as opposed to providing an outlet for large-scale brewers—and I have lodged the amendments to clarify and assist in that regard.

I move amendment 30.

Alexander Stewart: I will speak to amendments 31, 33, 34, 38, 40A, 44 and 45. Amendment 31 would still allow for the inclusion of a guest beer provision but would not compel its inclusion. The amendment would require the Scottish Government to carry out further scrutiny and, importantly, consultation with representative bodies from the tied pubs sector before including a guest beer provision in the code. Proper consultation and scrutiny are required when seeking such a dramatic intervention in private commercial arrangements. For that reason, at the very least, further scrutiny is needed. Amendment 31 would not prevent the inclusion of a guest beer provision in the code; it merely allows time for greater consultation and study before setting strict parameters in legislation that might have hugely detrimental direct impacts on a significant number of businesses in the pub and hospitality sector, as well as down through the supply chain.

I believe that amendment 33 is necessary to avoid unintended consequences from the proposed provision, if it is included in the future statutory code. It would ensure that there are protections for domestic producers which, I have already highlighted, could be negatively impacted by the bill.

As you have already heard, limits have been proposed and amendment 33 would include a provision for a 50,000 hectolitre cap on brewers that are able to take advantage of the provision, thereby ensuring some protections for domestic brewers. I strongly believe that a limit is needed, but what it is should be open to consultation and will always be controversial. Fifty thousand hectolitres is 25 per cent of the maximum output for a brewer to qualify under the EU’s definition of “small brewer”.

Amendment 34 sets definitions around guest beer provisions, which would give some protections if previously highlighted amendments fall. It is also aimed at ensuring that the provision is not misinterpreted, by providing clarity on when a guest beer agreement cannot be applied for. That includes when the tied pub tenant is already permitted to sell a guest beer in their current agreement.

My other amendments are mostly housekeeping amendments that ensure that the bill will be clear and concise and will give tied pub tenants and the pub owners greater clarity. Amendment 40A, which is an amendment to amendment 40, places a geographic restriction on the provision of guest beer. Graham Simpson has proposed a limit of 5 miles, but I feel that 7.5 miles is more suitable given that the boundary would be larger. However, I am willing to listen to the arguments on a more restrictive limit.

Amendment 44 stipulates that a guest beer is

“subject to the approval of the pub-owning business”.

There are legitimate reasons for that, and there are limitations to it. It would ensure some protections for the pub-owning businesses whose continued operation of the tied model is inherently linked to the wet rent of any premise.

We have heard from consumers about consumption and amendment 34 ensures that guest beers are taken account of in any provision under the new statutory rules. As we have also heard, the issue of choice is one of the main factors. My amendment sets the limit at 10, which is higher than the current average in tied pubs,

which is nine, and is 20 per cent higher than the average in the free trade.

Amendment 44 helps to ensure that there are opportunities for future generations to start and run their own businesses and amendment 45, in a similar vein to amendment 44, seeks to give protections to the tied model in Scotland. It takes into consideration the bespoke arrangements that many operators have with their landlords around sourcing guest beer.

The Convener: I notice that Mr Rowley wants to come in; I propose, unless he indicates otherwise, to bring him in before the minister comes in. I see that he is nodding in agreement with that.

Graham Simpson: I have three amendments in group 3 and, as you have heard already, this is an important group, so, if you will excuse me, I will speak for a while, although I will cut down dramatically what I had planned to say.

The amendments in my name seek to give protections to the smallest Scottish producers and those in the local area to the pub. A completely unrestricted guest beer provision would have a number of unintended consequences, which we must be alive to. I thank the previous speakers for highlighting those in detail. I share with them the concern that, if that provision proceeds, there will be detriment to many parties. Not only will we see larger players who operate in Scotland take advantage by driving prices down, the lack of restriction could see further multinational operators enter the Scottish on-trade market with the sole purpose of crowding out the growing number of excellent Scottish brewers, which is a great thing; those brewers continue to go from strength to strength.

In Scotland, we are rightly proud of our whisky industry, but we also have a deep and rich history of brewing that is similarly illustrious and inspiring. Brewing in Edinburgh dates back to the 12th century, when monks at Holyrood abbey took advantage of the natural springs underneath what is now our Parliament. Some might say that what was produced on the site then is far better than what is produced now—but that is for another day. As I was not around in the 12th century, I cannot really say who is right.

10:30

I could go on to give you a history of brewing in Scotland at this point, which may well be of interest, but I will not do that. I will just say that the small revolution that has taken place in brewing in Scotland in recent years should be celebrated and supported.

The Conservative Government at Westminster has done that by ending the disastrous beer duty escalator that was introduced by Gordon Brown in 2008, under which beer duty increased by an eye-watering 42 per cent over five years. That was damaging for brewers and community pubs throughout the UK. The Conservative Government reversed that policy and cut beer duty by 2 per cent in three budgets. Since then, it has frozen beer duty every year since, apart from a single inflation increase in 2017. That has led to a return of confidence in British and Scottish brewing, with pubs that we should celebrate. We look forward to celebrating them again once they are allowed to reopen.

It is crucial that we do not undermine any recovery. When considering the proposed legislation, we should all be conscious of the need to protect our local producers. My amendment 40 would ensure that pubs can access the guest beer provision only in the local area. The introduction of a geographical restriction on the guest beer provision helps to ensure not only that smaller producers—those that are meant to be helped—benefit from the legislation, as Neil Bibby has previously outlined but that consumers can experience and support producers in their local area. It would mean that pubs would be able to utilise the guest beer provisions to stock a beer only if the beer was brewed within 5 miles.

I accept that the stipulation of 5 miles might seem strict, and I am willing to explore the other options presented through amendment 40A from Alexander Stewart, which sets the limit at 7.5 miles, amendment 40B from Maurice Golden, which puts it at 10 miles, amendment 40C from Rachael Hamilton, which sets the limit at 20 miles, and amendment 40D from Jeremy Balfour, from whom we are yet to hear, which sets the limit at 50 miles—way further than what I propose.

One of the reasons why I have suggested 5 miles is that there are already measures in place to ensure that a beer from any distance is allowed if there is agreement between the tied pub tenant and the pub-owning company. Maintaining a 5-mile zone around each respective pub will still give opportunities for local producers, perhaps giving them an advantage over non-local products while still allowing for the sourcing of products from outside the 5-mile zone through the channels that are currently available. That could involve the SIBA BeerFlex scheme from the Society of Independent Brewers, which has beers from a growing number of Scottish brewers. I could list them all, but I will not do that, as it is quite a long list; suffice to say, there is no shortage of choice under BeerFlex. Even for those brewers that are not part of that scheme, the beers are still often available to operators.

If there is a clear demand for a product, the operator or tied tenant will approach their business

development manager and ask for that product, because they believe that they can make a profit from it. As it is in the pub-owning business's best interests that the tied tenant is successful, it will support that choice by providing bespoke arrangements to access the desired beers, ensuring that the tied tenant, the consumers and the pub-owning businesses succeed.

Placing a geographic limit on a guest beer does not limit those from outside from selling their beers inside any pub—far from it. However, it ensures that the most local brewers would have favourable conditions in their local communities.

Amendment 32B would amend amendment 32, in the name of Maurice Golden, which, as we have already heard, provides for the pub-owning business to source the desired guest beer. Amendment 32B would reduce the limit of 30,000 hectolitres that is proposed in amendment 32A to 10,000 hectolitres. I point to the well-established routes into tied pubs through existing channels, which do not preclude beer from any brewer of any size in any location from being sold in a tied pub. What is proposed provides protections for pub-owning businesses and the smallest of brewers.

Furthermore, amendment 32B specifically states that

“it is not unreasonable for a pub-owning business to refuse an application”,

but that does not prevent brewers producing more than 10,000 hectolitres from being accessed using the guest beer provision. If it is in the mutual interests of the pub tenant and the pub-owning company, the guest beer can still be sold.

Amendment 41A is an amendment to amendment 41, in the name of Jeremy Balfour. It changes the proposed cap in amendment 41 from 100,000 hectolitres to 5,000 hectolitres, which is the current rate under which producers receive a 50 per cent discount in excise duty. It is a natural limit as it is already an established line.

I urge members to back the amendments should they be required.

Richard Lyle: Before I turn to amendments 33A and 33B in my name, I think that it is important to note how similar the guest beer provision in the bill is to the dreaded beer orders of the 1980s. In 1989, licensing legislation that was passed by Margaret Thatcher's Conservative Government made it possible for a tied pub to stock at least one guest beer from a different brewery. The Monopolies and Mergers Commission was concerned that the market concentration of the big six breweries, at 75 per cent, represented a monopoly situation. The Supply of Beer (Tied Estate) Order 1989, better known as the beer orders, allowed publicans the freedom to buy non-beer drinks from any source, not just the controlling brewery, and to sell at least one draft beer from a different brewery.

In addition, many of the larger brewers were forced to sell off many of their pubs, with the intention that they should become free houses or be passed on to smaller brewers, thus increasing choice and free trade. The unintended consequence of the legislation was that brewers sold off their less profitable pubs. However, following a review in 2000 by the Labour Government, the beer orders were revoked by early 2003.

Does Mr Bibby really want to reintroduce a policy of the Thatcher Government that was overturned and removed by a Labour Government? The beer orders were disastrous for pub-owning companies and tenants alike. Tied pubs and pub-owning companies have nowhere near the 75 per cent market concentration that the Monopolies and Mergers Commission believed justified the orders. As Phil Mellows said in a 2013 miniseries on Thatcher's alcohol legacy in *The Morning Advertiser*, it was

“arguably the largest state intervention in industry in recent British history.”

Are we going to repeat the same mistakes as before? Imposing Thatcherite policies on the people of Scotland is not often welcomed. I am sure that Mr Bibby, as a Labour Co-operative MSP, would agree on that point.

In the debate on an earlier group of amendments, we heard from Maurice Golden about the 151 tied tenants who wrote to the First Minister because they are as concerned about the bill as I am. They are particularly concerned about the provisions on MRO, but it is obvious that there are also concerns about the guest beer provision.

Amendment 33A would set a provision on guest beer whereby a pub-owning company could refuse an application in respect of a guest beer only if that beer was

“brewed by a producer which has brewed in excess of 200,000 hectolitres of beer in the previous 2 years.”

Its aim is simple: it is intended to encourage producers that are not large multinationals to put more Scottish beer into Scottish pubs. It would also help to prevent a potential race to the bottom on price.

From evidence that has been provided to the committee we know that there is already more choice in tenanted and leased pubs in Scotland than in the independent free trade, so there is no issue in respect of choice. We also know that it makes commercial sense for pub companies to offer a full range of the beers that their tenants'

customers would like to drink—from lagers to bitters and stouts.

In 2010, the Office of Fair Trading found no evidence that the beer tie results in competition issues that cause harm to consumers. It concluded that, given the competitive nature of the market, with pubs typically operating in areas with a large number of rival operators, any attempt by the pubcos to restrict choice or raise prices would not be sustainable, as consumers would simply go elsewhere. The OFT therefore found no evidence of market power.

However, it might be that a pub would like to support a local brewer, or an up-and-coming Scottish brewer from further afield, that its customers have inquired about. I believe that it is not correct to take a size threshold that is used across Europe to make a distinction between large and small breweries in relation to the provision on guest beer.

The Convener: I call Rachael Hamilton, who has rejoined us, to speak to amendment 35 and other amendments in the group.

Rachael Hamilton: I will speak to three amendments in this group.

Amendment 35 seeks to provide many of the protections that my colleagues have already highlighted and which will be desperately needed if the relevant provision in the bill is not to have negative consequences.

A race to the bottom on price would only work to the detriment of small domestic brewers. Amendment 35 would offer protections for pub-owning businesses, by giving them the opportunity to source desired products, and for the smallest producers, by including an effective cap of 20,000 hectolitres. The reason for having such a cap is well documented. It would ensure protection for the smallest producers and would give them an opportunity that simply would not exist if the proposal were to go through unamended.

However, amendment 35 could be pre-empted by amendment 30, in the name of Maurice Golden, which would remove the provision in schedule 1 entirely. As Maurice Golden and Graham Simpson have highlighted, the reasons for removing that provision in its entirety are well founded. There are already numerous routes to market, of which the SIBA Beerflex scheme is one; other companies also already offer bespoke arrangements. In many cases, if a tenant asks for a specific beer it will happily be provided to them by the pub-owning business. Amendment 35 would retain a right of first refusal on supplying.

At previous meetings of the committee, Mr Bibby spoke about Scottish beer being underrepresented in pubs. I have yet to see any evidence that that is the case. In my experience, most Scottish pubs have Scottish beers available. I would be interested to hear whether Mr Bibby could name just one that does not. Even if we were to accept his assumption, given that there are only 750 tied pubs in Scotland that represents just 17 per cent of the market. There must be a greater issue with domestic producers being able to be properly represented in our pubs. If one of the central arguments for including the provision is that it will support Scottish brewers in gaining access to pubs, there would be no underrepresentation in the off-trade.

From the CGA statistics we know that, on average, a greater range of beers is on offer in tied pubs in comparison with that in independent free-trade pubs, which make up almost half the market in Scotland. That does not stack up.

10:45

We know that things can be difficult for small producers, regardless of place of origin. Many Borders brewers, for example, treat their local market as covering both sides of the Tweed. Given the scale of production and their inability to compete on price, including a completely free-ranging guest beer offer would encourage a race to the bottom on price and would only see those small and medium-size brewers crowded out further.

Amendment 40C would increase any geographic restriction on the guest beer provision to 20 miles and amendment 41C would set any cap at 50,000 hectolitres.

The Convener: I call Michelle Ballantyne to speak to amendment 36 and other amendments in the group.

Michelle Ballantyne: I have three amendments in this group: 36, 37 and 47. Amendment 36 aims to tidy up the drafting and make it more precise. It would change

“sell to the pub’s customers”

to

“offer for retail sale on the premises”.

That change is important, because the wording is more meaningful.

Amendment 37 would remove the expression

“at a price of the tenant’s choosing”,

which I believe serves no purpose. The pub-owning business does not control pricing where a guest beer is concerned, so amendment 37 is a tidying-up amendment.

I will not move amendment 47. I have had communication with SIBA, which feels strongly that membership of the organisation should not be

a requirement to produce a guest beer. The paragraph in question is a bit problematic and could do more harm than good. I have listened to the arguments that other members have made around their amendments. I live in the Borders—as Rachael Hamilton does—where we have a number of small breweries; even sitting where I am, one of the well-known breweries is 34 miles from me. We need to be careful about mileage; I am sure that anybody in the Borders would consider anything that is brewed in the Borders as a local beer, so I am wary about distances.

The Convener: I call Jeremy Balfour to speak to amendment 40D and other amendments in the group.

Jeremy Balfour: Amendment 40D would increase the 5-mile geographic restriction that is proposed in amendment 40 to 50 miles; it would give a more Scottish approach to the matter, which would be helpful.

My amendment 41 would set a cap of 100,000 hectolitres and make it

"subject to the approval of the pub-owning business".

We have had an interesting debate and I share many of my colleagues' concerns regarding the inclusion of the provision at all for the reasons that have been set out, which I will not rehearse. However, should it be the desire of the committee that a provision must be included, my amendment presents an option that would safeguard against the unintended consequences that have been mentioned.

Let us examine past experience. In 2004, the UK Government considered extending the maximum threshold to benefit from small brewers relief—originally set at 30,000 hectolitres in 2002—but decided not to extend it all the way to the European Union maximum of 200,000 hectolitres. The Government was keen, but it was the small brewers that benefited from the relief.

I am sure that my fellow committee members know, as I have learned recently, that 200,000 hectolitres is equivalent to 35 million pints per year, so that threshold is arguably of concern more at regional level than to a local brewer. The UK Government decided instead to increase the maximum threshold to 60,000 hectolitres.

Therefore, a cap of 100,000 hectolitres—or, if you do your maths, 17.5 million pints per year—would allow pubs to access beer from a larger number of local and regional brewers. For that reason, I move amendment 41 in my name.

The Convener: May I just clarify, Mr Balfour, whether you are moving amendment 40D as well as amendment 41?

Jeremy Balfour: Amendments 40D and 41.

The Convener: My apologies—I think that you should just be speaking to the amendments at this stage. No doubt we will tidy that up in due course.

Alex Rowley wants to speak on those various amendments.

Alex Rowley: I think that Michelle Ballantyne said that this provision was a bit problematic—as I certainly think those amendments are. I agree with her.

Maurice Golden proposed both restricting guest beer agreements to small brewers and removing guest beer agreements entirely from the bill. I am not sure that small brewers would support the proposal that guest beer agreements be removed entirely. Contradictions run through the amendments.

I can sympathise with those who want the guest beer agreements to be used as a vehicle for bringing more products from small brewers into tied pubs. However, there is also a strong case for allowing publicans to decide which guest beers to stock and how to respond to consumer demand.

The bill as drafted will allow the minister to specify the scope of a guest beer agreement when drafting the pubs code, following consultation. That is a much more reasonable way to establish the detail of the guest beer agreement than amending the bill would be. That is why I urge fellow members of the committee not to support the amendments in this group.

Jamie Hepburn: I have listened with interest to members' contributions on the amendments, and to the views of the various stakeholders whom I have met recently, including the Scottish Licensed Trade Association and the Scottish Beer and Pub Association, on the issue of guest beers.

I gave consideration to lodging amendments to this part of the bill on what I think is the central aim for many in supporting a guest beer arrangement: to ensure that a greater number of Scotland-based, smaller breweries can better get their product into the on-trade. Members will not be surprised to hear that the Scottish Government greatly supports that. However, I decided in the end that, on balance, it was better for the Government not to lodge amendments on the guest beer provisions. Those provisions are, of course, central to the bill, giving tenants more control over the beers that they sell and the returns that they receive from sales. The provisions also mean more choice for consumers, which I welcome.

The majority of amendments in the group seek to remove, replace or undermine the guest beer arrangements. Amendments 40 and 41 would remove the ability of the tenant to choose the beer, while amendment 37 would remove the

tenant's control over the price at which the beer may be offered. Those are just examples. Such fundamental changes to the provisions would severely limit a tied pub tenant's opportunities and choice of products that are free of tie, and would mean that guest beer agreements would be of lesser value to tenants.

I have more sympathy with the sentiments behind the amendments that relate to ties of breweries that supply guest beers, because, as I have indicated, I would very much like pubs to supply more craft beers—local ones in particular. I am not sure that the bill as currently drafted will in and of itself achieve that; however, the amendments that have been lodged on that point seem muddled, and their detail strikes me as inappropriate for the bill.

In seeking to ensure greater access to the market for craft beers and smaller breweries, I am conscious that the bill presently defines a guest beer arrangement as an "agreement" that, among other things,

"satisfies any other criteria specified in the code."

Alex Rowley made that point. As with much of what the bill enables, I believe that the detail on that matter would best be laid out in the code, rather than in an overly prescriptive fashion in primary legislation.

I am considering how the guest beer arrangements under the code might be shaped using the existing provisions in the bill. Any detail would be for the code and not for the text of the bill, and would be subject of course to wide-ranging consultation—to which, as I have set out, we are committed. Much of what has been raised by members today can inform that process.

It is the Government's view that the amendments do not improve the bill. I therefore ask members of the committee not to support the amendments in group 3.

The Convener: I propose a brief break before we come to the member's response to the amendments and to what the minister has said. I suspend the meeting, and then we will hear from Mr Bibby.

10:55

Meeting suspended.

11:05

On resuming—

The Convener: [*Inaudible*.]—amendments to the Tied Pubs (Scotland) Bill. Committee member Andy Wightman has joined us; he has been in another committee meeting until this point.

We return to the group of amendments on Scottish pub code: requirement to offer guest beer. I ask Neil Bibby, as the member who introduced the bill, for his response to the amendments in the group, which have been lodged by various members.

Neil Bibby: The amendments in this group seek to remove, restrict or otherwise change the provisions in the bill with regard to the code requiring a pub-owning business to enter into a guest beer agreement with a tenant. I reassure members that I believe that a guest beer agreement is a proportionate measure and an important part of the bill. I know that publicans, consumer organisations such as CAMRA and Scottish brewers have been calling for such a measure for a long time. I therefore urge the committee to reject amendment 30, which would remove the provisions completely.

I support tenants being able to choose which guest beer they sell, depending on their own circumstances and customer preferences, and I therefore oppose the amendments that seek to limit which beers can and cannot be chosen as guest beers. I do not think that it would be appropriate to put in primary legislation a limit on the number of hectolitres or the number of miles between the pub and the brewery.

I ask members to consider the possible unintended consequences of their amendments. For example, Graham Simpson's amendment 40 would, if it was agreed to, mean that a brewer in Strathaven, for example, could not use the guest beer agreement to access pubs in East Kilbride, let alone pubs in Glasgow or Edinburgh. There are also problems with the other amendments in the group, and I ask the members who lodged those amendments to consider not moving them.

As Alex Rowley and the minister said, the bill requires the code to specify the circumstances in which the offer must be made, which I believe is appropriate. I believe that the code—and the consultation on it—rather than the bill itself, is the best place to consider such matters.

I have more sympathy with the amendments that seek to link the agreement to small breweries relief, as suggested by SIBA, but I suggest that that issue would be better addressed through the code than in primary legislation. I urge members not to move those amendments and, if the amendments are moved, I urge committee members to reject them.

The Convener: I ask Maurice Golden to wind up and indicate whether he wishes to press or withdraw amendment 30.

Maurice Golden: The debate has been helpful. There is great concern that the bill as it is currently drafted will, in reality—although this is not the

intention—give a nod to large-scale, race-to-the-bottom, multinational brewers rather than supporting smaller, local Scottish brewers, which provide excellent beer and ale that we can all enjoy. I hope that committee members will take that on board and consider supporting a number of the amendments in this group. However, I do not intend to press amendment 30.

Amendment 30, by agreement, withdrawn.

Amendment 31 moved—[Alexander Stewart].

The Convener: The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 31 disagreed to.

Amendment 32 moved—[Maurice Golden].

The Convener: The clerks have reminded me that I must now call amendment 32A, which is an amendment to amendment 32.

I apologise for any technical mix-up on my part. There are two amendments to amendment 32. We must put the question on each of those before we can go to amendment 32. That is logical.

Amendment 32A moved—[Maurice Golden].

The Convener: The question is, that amendment 32A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 32A disagreed to.

Amendment 32B moved—[Graham Simpson].

The Convener: The question is, that amendment 32B be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 32B disagreed to.

The Convener: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Andy Wightman (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 32 disagreed to.

11:15

Amendment 33 moved—[Alexander Stewart].

Amendment 33A moved—[Graham Simpson].

The Convener: The question is, that amendment 33A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 33A disagreed to.

Amendment 33B moved—[Graham Simpson].

The Convener: The question is, that amendment 33B be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 33B disagreed to.

The Convener: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 33 disagreed to.

The Convener: For the information of Andy Wightman, who has just joined us, I say that I am simply reading the names off the screen in the order that they appear in front of me—there is no particular reason for the order in which I am reading them out.

Amendment 34 moved—[Alexander Stewart].

The Convener: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 34 disagreed to.

Amendment 35 moved—[Rachael Hamilton].

The Convener: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 35 disagreed to.

Amendment 36 moved—[Michelle Ballantyne].

The Convener: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

Abstentions

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

The Convener: The result of the division is: For 0, Against 6, Abstentions 3.

Amendment 36 disagreed to.

Amendment 37 not moved.

Amendment 38 moved—[Alexander Stewart].

The Convener: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 38 disagreed to.

Amendment 39 moved—[Maurice Golden].

The Convener: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 39 disagreed to.

Amendment 40 moved—[Graham Simpson].

Amendments 40A to 40D not moved.

The Convener: I call Graham Simpson to press or withdraw amendment 40.

Graham Simpson: I was struck by the words of Neil Bibby when he mentioned the good example of Strathaven Ales. If amendment 40 were agreed to, it could prevent Strathaven Ales beers from being sold in premises in East Kilbride, which would be an awful shame. Therefore, I will not press amendment 40.

The Convener: Are you seeking to withdraw amendment 40 in the interests of the residents of Strathaven?

Graham Simpson: I am seeking to withdraw the amendment to help the people who live in East Kilbride and love Strathaven Ales. I include myself in that category.

Amendment 40, by agreement, withdrawn.

The Convener: [*Interruption*.] I can hear Mr Balfour, but I cannot see him. I had not got around to calling him yet. I have to call Mr Balfour to move or not move amendment 41 before I put the question on the amendment.

Graham Simpson: I think that Mr Balfour is taking part in another event. He is in the office next to mine, so I could alert him to the fact that he is required, if that would be helpful.

The Convener: Is another member in a position to deal with amendment 41 on Mr Balfour's behalf?

Maurice Golden: I am happy to move the amendment.

Amendment 41 moved—[Maurice Golden].

The Convener: I remind members that amendments 41A, 41B and 41C are direct alternatives.

Amendments 41A and 41B not moved.

Amendment 41C moved—[Rachael Hamilton].

The Convener: The question is, that amendment 41C be agreed to. Are we agreed?

Members: No.

11:30

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 41C disagreed to.

The Convener: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)

Abstentions

Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 41 disagreed to.

Amendment 42 moved—[Maurice Golden].

The Convener: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 42 disagreed to.

Amendment 43 moved—[Maurice Golden].

The Convener: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 43 disagreed to.

Amendment 44 moved—[Alexander Stewart].

The Convener: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 44 disagreed to.

Amendment 45 moved—[Alexander Stewart].

The Convener: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 45 disagreed to.

Amendment 46 moved—[Maurice Golden].

The Convener: I apologise—I have a technical difficulty. I suspend briefly until I manage to get back into the meeting. Everyone can see and hear me, apparently, but I can neither see nor hear them at the moment.

11:35

Meeting suspended.

11:37

On resuming—

The Convener: Welcome back; the minor technical glitch has been sorted.

The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Golden, Maurice (West Scotland) (Con)
Lindhurst, Gordon (Lothian) (Con)
Simpson, Graham (Central Scotland) (Con)

Against

Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Lyle, Richard (Uddingston and Bellshill) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Rowley, Alex (Mid Scotland and Fife) (Lab)
Wightman, Andy (Lothian) (Ind)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 46 disagreed to.

Amendment 47 not moved.

The Convener: The next group of amendments is on the requirement to offer a market-rent-only lease.

Amendment 48, in the name of Graham Simpson, is grouped with amendments 49 to 52, 5, 53 to 67, 67A, 67B, 67C, 6 to 8, 68 to 75, 77, 76 and 78 to 84. I point out that amendment 48 pre-empts amendments 49 to 52, 5, 53 to 67, 67A, 67B, 67C, 6 to 8, 68 to 75, 77, 76, 78 and 79; that amendment 53 pre-empts amendments 54 to 56; that amendment 57 pre-empts amendments 58 and 59; and that amendment 77 pre-empts amendments 76 and 78.

I invite Graham Simpson to move amendment 48 and to speak to all the amendments in the group.

Graham Simpson: This is a big group, although only seven of the amendments are in my name. Unfortunately for members, one of them is amendment 83, which is a bit of a whopper. It is the only amendment that I have ever seen that contains mathematical formulas. I will return to amendment 83 in due course.

The ability to serve an MRO notice at any time will have a significant commercial impact on pub-owning businesses. Brewers have told me that the very existence of the provision will be a disincentive to investment in Scotland. As we have heard, now more than ever, we can do without that. The last thing that the industry needs is more uncertainty. The road to recovery for what is left of the industry will be long and hard, and we do not want to add to its woes.

One option would be for us to remove the market-rent-only provision from the bill entirely. That would be the effect of amendment 48. As the convener has already said, if the committee were to agree to amendment 48, most of the other amendments in the group would fall, including Maurice Golden's amendment 49.

Mr Golden does not go quite as far as I suggest, although he offers an alternative that he will undoubtedly explain. I suggest that members accept the reasoning behind amendment 48 and agree to it; nevertheless, Mr Golden's alternative is a good one, not least because it contains the line:

"the pub will continue to be a pub".

Who knew?

In amendment 67, Jeremy Balfour suggests that a tied pub tenant should be able to request an MRO only if they have been served with a notice of a rent review or if it is within one year of the expiry of a current lease and the pub-owning business has not served notice to quit. However, Maurice Golden is not too impressed with that—he suggests that the length of the period before expiry should be two years. Similarly, when Mr Balfour goes on to say that the tenant should have been a tied tenant of that tied pub for at least five years, Mr Golden says that it should be a longer period—he goes for seven years. Where Mr Balfour says that the tenant should not have been in receipt of a qualifying investment within the past seven years, Mr Golden goes for 10 years. Take your pick—I do not really want to hold the jackets in that fight.

My amendment 60 deals with what should trigger the requirement to offer a market-rent-only lease. It is linked to amendment 83, which I will come to in a bit. If the committee accepts amendment 60, the requirement to offer an MRO would kick in only when a tenant had notice of a significant increase in the price of a product or service supplied to them, or received a rent assessment proposal, or sent the pub-owning business a relevant analysis demonstrating that a trigger event had occurred.

The requirement in the bill as drafted to offer a market-rent-only lease to tied tenants would enable a tied tenant to ask for a free-of-tie lease at any time. That goes much further than the pubs code in England and Wales, where a tied pub tenant can serve an MRO notice only following a specific event. The rationale behind the broad provision in the bill is unclear. If an MRO option is to be included in the bill, it should go no further than the pubs code in England and Wales, and should specify the events that need to take place

in order for an MRO notice to be served. Other amendments in the group provide for that.

Amendment 83, which I accept is novel and very long, essentially mirrors the provisions in the code that is used down south. It would mean that an MRO notice could be served only when there was a significant price increase in tied products, at the end of the tenant's first contract, or at a contractual rent review.

11:45

Amendment 83 deals with the question of what such "significant" events may be. It is taken from the provisions that are laid out in the equivalent law in England, on which Neil Bibby based his approach to the bill. The first part of the amendment sets out in detail what may be considered

"a 'significant increase' in the price of beer"

and of other drinks, which are listed. The amendment sets out various formulas for making that decision because, unless we define what is meant by "significant", the legislation will surely be open to challenge. Law should be drafted as tightly as possible, so those mathematical formulas—while their presence may seem unusual, because it is—are to everyone's benefit, even if we might need Carol Vorderman to explain them; as the committee will know, I am no Carol Vorderman.

Having dealt with the price of beer and other drinks, amendment 83 goes on to set out other conditions that would trigger an MRO provision. Richard Lyle's very useful amendment 84 follows on from that; I hope that he will move and press one of his amendments. Should an MRO provision be required, it is my strong view that it should be introduced at a later date, once there has been a full and proper consultation on the details and a full economic impact assessment, and once the Scottish pubs code adjudicator's office has had time to establish itself.

Amendment 69 would ensure that a code would be introduced only once the impact of the legislation, and how it fits with the existing landlord and tenant law, has become clear. There is a lack of evidence to support the need for Government intervention in the market, and a lack of evidence as to the impact of the measures on the economy. The human rights assessment that has been undertaken in support of the bill is, in my view, of poor quality. The legislation introduces a form of security of tenure through the back door, the effect of which is unclear. It is uncertain how that will interact with existing landlord and tenant law. Amendment 69 sets a minimum period of two years before the provision can come into force, and I invite members to agree with that approach.

Amendment 70 seeks to ensure that there is certainty as to whether a form of agreement is MRO compliant. That has been a particular issue in England and Wales, where the Pubs Code Adjudicator does not, despite requests from pub-owning businesses, have powers in that regard. There is real merit in such a provision, because it would provide certainty for the parties as to what can be offered, as well as providing consistency across the sector, and it would reduce substantially the number of disputes, and the range of issues in dispute, that the adjudicator would be required to deal with. In the light of the experience in England and Wales, it would be a significant advantage to have such an arrangement, but an express duty needs to be imposed on the adjudicator to exercise such a role.

I move amendment 48.

Maurice Golden: Amendment 49 would give the Government the power to include an MRO option in the code. However, it would not compel it to do that and, crucially, would allow greater consideration, ahead of the code, of all the challenges around such a provision. The amendment also sets out a list of parameters or triggers, which stipulate the conditions in which the MRO option could be offered to a tenant if it were to be included.

We have already heard some crucial points in respect of the particular challenges around an MRO option, so it is sensible not to mandate its provision in primary legislation. We should also address some of the fundamental points that proponents of an MRO option put forward. There needs to be some transfer of value from pubcos to tenants, and an MRO provision would achieve that. The use of an MRO option is a bargaining mechanism. However, Europe Economics, in its "Impact analysis of the Pubs Code" report, concluded:

"we believe that any figures provided"

in such an agreement

"should be assessed with caution and ensure that a complete range of values (also intangibles) are included."

Amendment 68 would introduce an MRO waiver. Its purpose is to allow tenants and pub companies to agree an MRO waiver. Two parties enter into a commercial agreement in full knowledge of what is being taken on, so allowing one party to unilaterally break that agreement would be a poor precedent indeed. A waiver would be a valuable negotiating tool that would enable an incoming tenant to secure more favourable terms, as he or she would be guaranteeing to the pub company the surety of contract that is so important to companies when it comes to planning and investment and securing jobs in Scotland.

Does the tie create an unfair lock-in element? Europe Economics examined that in detail in its 2019 evaluation of the pubs code in England and Wales. It said:

"The characteristics of the tie make it such that once signed tenants cannot change their pubco for some time (although there are break options at different points in time). The IA"—

that is, the impact analysis of the legislation—

"believes that this 'limits tenants' ability to put pressure on pub owning companies' and also 'makes it difficult to judge whether tied tenants get a good deal or not', as they cannot choose."

Amendments 67A, 67B and 67C would increase the timeframe in relation to the triggers that Jeremy Balfour's amendment 67 would introduce. Amendment 67A would increase the period in which tied tenants could trigger the MRO option from one year to two years. Amendment 67B would increase the period for which the person had to have been a tied tenant from five years to seven years. Amendment 67C would increase the proposed qualifying investment period from seven years to 10 years.

Amendment 71 would ensure that the bill captures only those pubs that are intended to be captured, by ensuring that managed operator agreements are excluded from the MRO option. Normally in managed operator agreements, someone operates the pub on behalf of the pub-owning company. The pub company typically holds the liability for property repairs and maintenance and pays all running costs and for all stock, and the operator is paid a management fee, which guarantees an income, as well as additional bonuses based on the business performance. There are also managed operator agreements in which someone is employed directly by the brewery or the pub company that owns the property, and the operator is paid a salary. The brewery or pub company employs everyone who works in the pub and has full responsibility for the management and upkeep of the property—the model is similar to a franchise model. I do not think that managed operator agreements were intended to be included in the bill, so I lodged amendment 71 in good faith, to ensure that there is clarity.

The Convener: I call Richard Lyle to speak to amendment 52 and the other amendments in the group.

Richard Lyle: I will speak to amendments 52, 55, 56, 59, 64, 72, 73, 75, 76, 78, 79, 82 and 84.

I concur with what was said about the MRO option, which does not deliver anything like parity between tenants in Scotland and tenants in England and Wales. It is nothing like the provisions that apply in England and Wales. It would be a disaster if it were allowed to proceed. At the very least, the proposed approach needs to be heavily amended, so I am glad that we are debating the issue.

An MRO agreement is based on a commercial model that is fundamentally different from a tied lease, with different obligations and responsibilities on each party. As such, flexibility is needed. In some respects, a deed of variation would make a lease so complex that it would be impossible to follow, and there would be tax liabilities and greater legal costs for both sides in the longer term. Changes to a lease via a deed of variation would potentially lead to significant costs for the licensee, including additional land registration fees and significant legal fees, as lawyers assessed lengthy and complicated historical leases. If a lease was amended via a deed of variation, it would be far harder to follow and open to misinterpretation in the longer term.

A new agreement would guarantee legal certainty, remove ambiguity and set up both parties with maximum clarity, openness and transparency. Everyone would be clear about what was agreed.

Following a number of arbitrations on that point, the PCA issued a statutory advice note in 2018, stating that the legislation allowed for an MRO agreement to be a new agreement or a deed of variation to an existing lease. Critically, it also confirmed that, although the terms of an MRO agreement had to be "reasonable", they did not have to be the same terms as those of a tied agreement.

Those are crucial points, which recognise that an MRO agreement is not simply the same as a tied agreement with the beer tie removed. They reflect that an MRO agreement is much more akin to a standard commercial lease that does not necessarily include all the additional benefits and support that come with a tied agreement.

For those reasons, although an existing agreement could be changed by deed of variation, a new lease is likely to be much more appropriate because of the number of changes that would be required. That is the case in the vast majority of MRO agreements in England and Wales.

The amendments seek to set out in the bill the circumstances in which market-only leases could be sought, rather than leaving them to be determined in regulations.

The trigger events are based on the English pubs code; the tenant would be required to serve a notice in the prescribed terms when one of those events occurred. The amendments seek to reach a balance between providing sufficient certainty on when market-only leases could be triggered and leaving the fine detail of procedures to regulations. The amendments have been lodged to enable a

pub-owning business to offer a new lease rather than modify an existing lease, which better suits Scottish practice.

The amendments propose three circumstances in which a tenant could serve notice to request a market-only lease. The first circumstance is when a tenant

"receives notification of a significant increase in the price at which a product or service which is subject to a product or service tie is supplied to a tied pub tenant".

The meaning of "significant increase" is not defined in the amendments and would need to be defined in the code.

The second circumstance is when a tenant receives a proposal for an increase in rent following a rent review that is required under the lease or the code, and the

"investment exception does not apply."

The latter recognises that it is not appropriate to trigger a right to request a market-only lease when the proposed rent increase is associated with an agreement to make an investment in works in the pub with a view to improving trade. The investment exemption has been tightly defined, based on the English pubs code.

The third circumstance is when a tenant demonstrates that a "trigger event" applies, which must meet a series of criteria. The event must be "beyond the control" of the tenant, it must not have been "reasonably foreseeable" and it must decrease the

"level of trade that could reasonably be expected to be achieved at the tied pub over a continuous period of 12 months."

The relevant event cannot be an increase in rent or an increase in the cost of products or services that would otherwise allow the tenant to serve notice. Additionally, the event must not affect other pubs in the area or, if it does, a series of further criteria would apply, such as changes to the "local economic environment".

The trigger points are necessary, at the very least, and the amendments seek to set out in detail how they would work, giving surety around investment and clarity on the Scottish market position for tenants and landlords. My amendments would achieve that, but we must also learn from the experience of five years of the English and Welsh statutory code to ensure that there are no unnecessary arbitrations, misinterpretations or challenges, as have been seen in England and Wales with the Pubs Code Adjudicator.

This is a hugely complicated issue, which we must get right, as other members have said. If the MRO option is to be included in the bill, please let us ensure that it is workable.

Jamie Hepburn: I apologise to members, because I must speak in some detail on this group of amendments, given the central importance of this part of the bill.

My amendments in the group, and those of other members, are designed to be constructive, focusing on some areas of the bill that must be amended to achieve the balance that we need. My amendments are pragmatic and aim to achieve the outcome that I set out at the start of our stage 2 deliberations of ensuring a level playing field between tenant and landlord, while respecting the intent of Neil Bibby's bill.

I have met and listened to pub-owning companies, tied pub tenants and their representatives, and an issue that has come up time and time again is that of the market-rent-only provisions in the bill. Specifically, there is concern about how those provisions may present disincentives to businesses investing in their tied pubs, as there will be no guarantee of security of return. Equally, I have heard from those who represent tied pub tenants how important a straightforward MRO process is to creating more balance in the relationship between tenants and landlords.

12:00

My amendments would allow the Scottish ministers to set out in the code the circumstances in which an MRO lease need not be offered. Importantly, though, given that the MRO provisions are a central part of the bill, my amendments do not demur from the default position that an MRO lease should, where appropriate, be offered.

I believe that change is also required in this area of the bill to make sure that it is compliant with rights under the European convention on human rights and to strike a better balance between the rights of pub companies and tenants. The majority of the amendments in this group try to alter that balance, but I believe that my amendments are the ones that set the right tone. They also allow for proper consultation and meaningful engagement on the topic, which is evidently required, given the variety of amendments under debate. I note that a similar approach is taken in Michelle Ballantyne's amendment 80, but my amendments 5 and 6 would deal with that, and my other amendments 7 and 8, taken as a package, provide sufficient flexibility to cover the variety of arrangements in place in the tied pubs sector.

I must also make reference to Graham Simpson's amendment 83 and Richard Lyle's amendment 84, which set out what would constitute a trigger event for an MRO lease to be offered. First, I must congratulate Mr Simpson on

the inclusion of some formidable equations in his amendments. It is the first time that I have seen such equations in any amendments to primary legislation. If they are agreed to, not only legal textbooks but an understanding of algebra will be required in interpreting the legislation. Mathematicians across the country might welcome the potential for unexpected business that Mr Simpson's approach might bring.

However, although I recognise the need for the MRO arrangements to have appropriate safeguards, I believe that that level of detail is best left to secondary legislation—in other words, the code itself. Indeed, amendments 83 and 84 draw heavily on the provisions on MRO leases that are contained in the pubs code for England and Wales. Mr Simpson made that point himself. It is worth reflecting on the fact that the provisions in question come from the Pubs Code etc Regulations 2016, which are, of course, a piece of secondary legislation. I think that that proves the point that provisions in this area should be left to secondary legislation rather than being included in the bill, as amendments 83 and 84 seek to do.

I am also interested in Richard Lyle's amendments on the Lands Tribunal for Scotland. However, I am not aware of Mr Bibby having had any conversations with that organisation; he could clarify whether that is the case. The Government has certainly not had any such conversations. I would question whether sufficient consideration has been given to whether the Lands Tribunal would have sufficient resources to deal with disputes under the code once it is introduced. I therefore ask Mr Lyle not to move those amendments.

The market-rent-only provisions are a central part of the bill and, if the bill becomes law, we must make sure that we get them right so that we can provide certainty for tenants and landlords as to the mechanism by which market-rent-only leases will function. My amendments will enable that to be determined through dialogue and consultation so that all parties can properly input into the process.

Accordingly, I urge members to support my amendments in the group and to reject those of other members.

The Convener: [*Inaudible*.]—to speak to amendment 53 and the other amendments in the group.

Is Rachael Hamilton there?

Rachael Hamilton: Yes. Can you hear me, convener?

The Convener: Yes.

Rachael Hamilton: I did not hear you. Did you say that I should speak to amendments 53, 54 and 77?

The Convener: I said that you should speak to amendment 53 and the other amendments in the group.

Rachael Hamilton: I lost you there, convener. I will speak to those amendments now.

Amendments 53 and 54 would prevent pub-owning businesses from having to modify the terms of an existing agreement, and amendment 54 stipulates that they should enter into a new agreement that is at least five years or for the length of the unexpired lease. Amendment 53 is another vital amendment if the MRO element is to be included, which, for all the reasons outlined so far, is a major issue with the bill.

Amendment 53 has two purposes. If other amendments seeking to make the MRO provision workable are not accepted, amendment 53 would recognise, as in England and Wales, that it would be entirely unjustifiable to offer an MRO agreement for any longer than the existing term of the current agreement. That is even more important in Scotland because, without the Landlord and Tenant Act 1985 and no right to renew, a company would be required to provide security of tenure beyond an existing lease term. For example, it cannot be right for a tenant to—[*Inaudible*.]—on a five-year or 10-year free-of-tie agreement—or whatever the company's standard free-of-tie contract may be—when the tenant has, say, only two years left on an existing lease.

As we know, without any trigger points, a tenant could seek an MRO agreement with just a few months of a tenancy remaining. If amendment 53 is agreed to, it would ensure that pub companies are not bound to extend an agreement with a tenant to longer than the original agreement. That would avoid further legal complications. If a tenant is on a long tied lease with more than five years left, they would have the security of at least a five-year MRO lease. It might simply not be viable or sustainable for a company to offer leases longer than that for that particular pub.

Another key point that we must consider with the tied pub model is that, although it provides benefits for both parties, those benefits are not maximised at the same point during an agreement or an economic cycle. It is an asymmetric reward system, and that is crucial to understanding why the MRO element of the bill is so problematic. As we know, for the tenant, the tie means running a pub with fewer up-front costs in exchange for potential revenues. For the pubco, it means an initial transfer of income, which subsidises the initial investment, and then taking revenues when the pub is doing well. That was explained in the

impact assessment accompanying the legislation in England and Wales. I will not go into that, convener, because it is too long and onerous, but you will know what I am talking about.

Through that mechanism, the beer tie helps to ensure an important return on investment for the pub company. That is because, by signing up a tenant for a fixed period, and with agreements around revenue shares through dry and wet rent, the pubco has an assured source of income for a given period, which can be used to justify and offset some up-front costs of investment. I have already talked about that. In that way, tied contracts can help to ensure on-going investment in the tenanted pub estate. If the tenant was able to change the terms of the agreement, particularly the wet rent, at any point of their choosing, the case for investment by the pubco could be significantly diminished.

The investment is crucial as a key driver of value for both the pubco and the tenant in the medium term by helping to sustain those pubs. We are talking about the sustainability and viability of those pubs—particularly community pubs—and generating increased sales and profits for both parties. There is risk and reward under the economic cycle.

One final benefit is derived from the profit-and-risk-sharing mechanism. The tie derives an asymmetric reward from selling the beer and its other operations, from food through to gaming machines. The reward for both parties is countercyclical. The pub company helps in times of low returns but takes part of the revenue in times of high returns—a more apt expression might be that the pubco gives and takes—which seems a perfectly acceptable model to me.

The relationship does not stop there. When faced with hard times, the tenant might want to ask for advice and help, including financial help, from the pub company. The pub company will be in a position to do that not only because of its financial strength, but because of knowledge that it might have acquired around the issues, which would allow it to explain any drop in revenue. I know that because I have visited some tied pubs in my constituency and had it explained to me by the tenants.

The UK Government's initial impact assessment recognised that the expected benefits from good times are higher for the pub company. That means that pubcos have an extra incentive to help the tenant succeed—not fail, but succeed. I will not go into all that in any more detail—that would be too much, and I know that you will cut me off, convener—so I will go straight to amendment 77.

Amendment 77 seeks to remove the Scottish pubs code adjudicator from the bill. The financial memorandum predicts that the adjudicator would get only 11 inquiries in a year. Moreover, those 11 inquiries would be at the cost of pubs covered by the code. The set-up and operating costs of the adjudicator would be at the expense of the tied tenants.

If the adjudicator is to operate effectively, it would have to replicate broadly the infrastructure in England and Wales. However, we know that the setting-up costs there were drastically underestimated. As such, we do not support additional costs on pubs at a time when they are already struggling during the pandemic, following sustained periods of lockdown. We are therefore seeking to remove the adjudicator entirely from the bill.

The Convener: I call Alexander Stewart to speak to amendment 57 and other amendments in the group.

Alexander Stewart: Amendments 57, 74 and 81 would ensure that the code sets a prescriptive response time on the negotiations between an MRO being triggered and agreement being reached. Under the bill as introduced, there is simply an ability to include a prescriptive response time, not a requirement. The amendments would ensure that one is, indeed, set.

On the wider provisions proposed in this group, I share the concerns about including an MRO provision at all. Nobody is forced to run a tied pub. One of the major benefits of choosing a tied model over other models is that tied pubs can be operated by individuals and, if they choose to relinquish the role, they can simply post their keys back through the letter box of the premises. That model also allows low-cost entry into the market for those who wish to run a pub and start their own business, whereas other routes would prove to be much costlier.

Under the bill, the MRO provision pulls the ladder up from future generations of budding entrepreneurs. It does not give Scottish tied tenancies parity with English and Welsh tenants—which Mr Bibby repeatedly gave as a key reason for introducing the bill—but puts them at a huge disadvantage. Far from supporting the Scottish tied pub tenants, the MRO provision as drafted would cause irreparable harm, and I urge the committee to back my amendments in this group.

The Convener: I call Michelle Ballantyne to speak to amendment 58 and other amendments in the group.

Michelle Ballantyne: Much has already been said about MROs, so I will try not to repeat all the arguments—I am aware that this discussion is taking quite a long time.

I think, from listening to the debate, that there seems to be a bit of confusion about whether we are trying to achieve consistency with what is happening in England and Wales or whether—as was said earlier—there is no need to be consistent. However, from a business perspective, and in discussing how the arrangements operate across the whole of the UK, it is important to have some consistency. Several of my amendments—amendments 61 to 63 and 65—are all about ensuring that consistency and not falling out of step, which would make doing business in Scotland more difficult.

Amendment 66 is important, as it ensures that pub-owning businesses are not under an obligation to grant a longer lease than would otherwise be conferred on a tied pub tenant. By default, it would give a form of security by the back door.

Such matters have been taken to court. The problem was highlighted in the High Court, in the case of Punch Partnerships (PTL) Ltd and Another v The Highwayman Hotel (Kidlington) Ltd—there is a longer title than that; I am sure that members will look it up if they are interested.

12:15

It is important that the MRO lease is consistent with a length of term that is reasonable. If we are not reasonable in what we do, the market will inevitably be decimated. We should not do anything that creates a back-door route to a secure tenancy, because then the pubcos will pull away from investing. The bill should not be an easy way of getting a cheap building.

I intend to move the amendments in my name. We have spoken to the minister about some of these matters. He lodged slightly different amendments, which he thinks cover the issues. However, they do not take exactly the same approach as ours, and members should consider the differences.

The Convener: I ask Jeremy Balfour to speak to amendment 67 and other amendments in the group.

Jeremy Balfour: The purpose of amendment 67 is to ensure that the MRO option can be triggered only under certain circumstances—that is, where the tenant:

“(a) has been served with a notice that the pub-owning business wishes to initiate a rent review,

(b) is within 1 year of the expiry of an existing lease and the pub-owning business has not served notice to quit,

(c) has been a tied-tenant of that tied pub for at least 5 years,

(d) has been served with a notice of a significant increase in the price at which a product or service which is subject to a product tie or service tie is supplied,

(e) has not have been in receipt of a qualifying investment within the last 7 years, and

(f) has not waived the right to request a market only lease.”

Amendment 67 would also require the code to specify what constitutes a “significant price increase” and a “qualifying investment”.

Convener, given your legal background, you will have noticed that three of my proposed triggers—the rent review, a significant price increase and a qualifying investment—are common in the England and Wales code. Given the level of detail that is involved, it is highly logical that those triggers are defined outside primary legislation and are set out in the statutory code.

Amendment 67 would introduce two further triggers, which address concerns about the highly questionable nature of an intervention in a market in relation to which no evidence of market failure exists, and which, ultimately, could lead to a party being able to break an existing contractual agreement, with no recourse for the other party.

The first such trigger is that the tied tenant must have been in situation for at least five years. That would ensure that the existing contract between pub company and tenant had surety for at least five years. Such surety is critical to forward planning and investment, and a tie benefits both parties—I will shortly explain why, as that is clearly not well understood by many members.

The second additional trigger is that the tenant must not have waived the right to request an MRO lease. Such a waiver should be allowed in the negotiation between the two parties at the start of the agreement.

The committee and the Parliament need to keep in mind that vertical restraints such as tied arrangements are entirely compatible with European Union competition law and have many benefits for both parties. I will not go into detail, but I can say that vertical restraints exist to address, for example, the hold-up problem, know-how, standardisation, economies of scale and capital markets.

Those issues are really important and are all features of beer ties. For example, pub companies invest in training prospective tenants in the key aspects of running pubs, such as licensing law, safety, the operation of beer dispensing systems and kitchen equipment, brand knowledge and specifications, line cleaning, planning law and—of course, in today’s world—the running of a Covid-safe pub. The transfer of knowledge and training is supplemented by wider business support, to

maximise sales and grow the business. Once that support has been taken, it cannot be given back.

The upkeep of brewery branding, imagery and reputation is critical for the likes of Belhaven and Heineken. Indeed, all companies have shareholders and quality metrics that are vital to their reputation for attracting the best. Economies of scale allow tenants to benefit from the landlord's purchasing power when it comes to insurance and utility costs, for example. Companies' expert knowledge of the pub market and their tenants allows them to provide loans, credit and financial support that would not be available on the open market.

The ability to go MRO undermines all those crucial benefits not just for the existing tenant, but for the remaining tied tenants, because the pub company will be in a weaker position to support them.

Another important characteristic of the pub sector in Scotland and across the UK is that the beer tie co-exists with other types of contract, including free-of-tie options. That allows tenants to select the contract that accommodates their interest in the best way, and it allows pubcos to match the tenants to the business model that will best fit them—and provide greater benefits to the pubco.

I will summarise. It is critical that an MRO option is subject to specific circumstances. The point that we keep coming back to is that we risk undermining the tied pub market to such a point that that great model of partnership and entrepreneurship will disappear from the Scottish market, at a time when there are fewer pubs. I urge members to support amendment 67.

The Convener: The deputy convener, Willie Coffey, has a question.

Willie Coffey: What is the significance of the constants in the mathematical equations in amendment 83? Can you help us on that, Mr Simpson?

The Convener: Is Mr Simpson there? I am wondering whether this will be a long explanation.

Graham Simpson: I am here, convener. I will be happy to address Mr Coffey's point when I wrap up the debate on this group of amendments.

The Convener: We look forward to that. However, we are out of time today and we need to discuss how we can progress stage 2. I thank the minister, the member in charge of the bill and all members who contributed today.

12:20

Meeting continued in private until 12:56.

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